IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
May 16, 2006 Session

STATE OF TENNESSEE v. JAMES S. VIOLETTE

Direct Appeal from the Criminal Court for Campbell County
No. 12423 E. Shayne Sexton, Judge

No. E2005-01869-CCA-R3-CD - Filed July 14, 2006

This is a direct appeal from a conviction on a jury verdict of driving under the influence of an intoxicant (DUI), second offense, a Class A misdemeanor. The Defendant, James S. Violette, was sentenced to eleven months and twenty-nine days with forty-five days to be served in the county jail and the remainder on probation. He was fined $600, and his driver's license was suspended for two years. The Defendant now appeals, claiming that the evidence was insufficient to support his DUI conviction beyond a reasonable doubt because the State failed to prove he drove on a public road. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and ROBERT W. WEDEMEYER, JJ., joined.

Michael G. Hatmaker, Jacksboro, Tennessee, for the appellant, James S. Violette.

Paul G. Summers, Attorney General and Reporter; Blind Akrawi, Assistant Attorney General; William Paul Phillips, District Attorney General; and Michael O. Ripley, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTS

The record shows that on the night of June 23, 2004, Sergeant Scott Lindsay of the Campbell County Sheriff's Office discovered the Defendant either asleep or passed out in the driver's seat of his vehicle, which was parked by the side of Ivydale Road several miles outside of LaFollette. After arousing the Defendant, Sgt. Lindsay noticed a strong odor of alcoholic beverage and conducted several field sobriety tests. The Defendant performed poorly on these tests and also stated that he had

too much to drink. Concluding the Defendant was intoxicated, Sgt. Lindsay placed the Defendant under arrest for DUI and informed him of his rights under the implied consent law.

In February of 2005, the Defendant was indicted by a Campbell County grand jury for DUI, second offense,[1] see Tenn. Code Ann. § 55-10-401 and -403, and violating the implied consent law, see Tenn. Code Ann. § 55-10-406. The Defendant received a jury trial in June of 2005. At trial, Sgt. Lindsay, the only witness to testify, stated that he was dispatched to a residence on Ivydale Road in connection with a disturbance call. After talking to the person who placed the 911 call, Sgt. Lindsay proceeded to drive up Ivydale Road looking for a "dark colored small pickup." Sergeant Lindsay discovered the Defendant in a truck, "between two and a half and three miles up Ivydale Road . . . sitting on the side of the road, about six feet, backed in off the roadway," at approximately 11:30 the evening of June 23, 2004.

Sergeant Lindsay explained that Ivydale Road is an asphalt road that is "off of Highway 25W, maybe about a half mile north of LaFollette," and which goes up Walnut Mountain. Sergeant Lindsay further described the location in which he found the Defendant's vehicle parked as the "gravel shoulder" of Ivydale Road, in a "rural area" without any houses or other buildings nearby.

Sergeant Lindsay testified that as he approached the Defendant's vehicle, he noticed the Defendant "appeared to be passed out" in the driver's seat. The keys were in the ignition of the Defendant's vehicle. Sergeant Lindsay stated that after waking the Defendant, he "noticed a very strong odor of alcoholic beverage" and observed that the Defendant's "speech was slurred and his eyes were watery, glassy and bloodshot. And he was very unsteady about his feet." The Defendant informed Sgt. Lindsay that he had "got into it" with his wife at Wanda's bar; they "had an argument and he'd had too much to drink and he left the bar, drove to Ivydale Road, and he drank three beers while he was sitting there and on the fourth he fell asleep."

Sergeant Lindsay administered three field sobriety tests: the "horizontal gaze nystagmus" test; the "nine-step walk and turn" test; and the "one-leg stand" test. Sergeant Lindsay opined that the Defendant performed "[v]ery poorly" on both the nine-step and one-leg stand tests. During his attempt to perform the tests, the Defendant raised his arms, leaned side-to-side, walked unsteadily, and swayed back and forth. Sergeant Lindsay concluded the Defendant was intoxicated and placed him under arrest.

Sergeant Lindsay further testified that he read the consent form to the Defendant, but the Defendant verbally declined to submit a blood sample for testing and refused to sign the form. Sergeant Lindsay also testified that, based on his experience as a law enforcement officer, he believed the Defendant was "very intoxicated" and his ability to drive was certainly impaired. On cross-examination, Sgt. Lindsay clarified that, while Ivydale Road "breaks up as you're going up the mountain" into alternating patches of gravel and asphalt, at the point where he found the Defendant

[1]The Defendant does not contest that the DUI conviction, should it stand, would be a second offense.

parked the road was paved. Sergeant Lindsay also stated that the physical evidence he found corroborated the Defendant's initial statement that he drank three beers and fell asleep on the fourth, as Sgt. Lindsay found three empty beer cans in the vehicle and a fourth open can.

The Defendant declined to testify at trial and was properly advised of the rights he waived in doing so. During closing arguments, the Defendant's counsel argued that the State failed to provide any proof that the road upon which the Defendant was found was a public road. At the conclusion of the trial, the Defendant submitted an oral motion for a judgment of acquittal, arguing that the State failed to prove the element of a public road. The trial court overruled the Defendant's motion, and the jury returned a verdict of guilty for both the DUI and implied consent offenses. In July of 2005, the Defendant received a joint sentencing and new trial hearing. The trial court sentenced the Defendant to eleven months and twenty-nine days at seventy-five percent, with forty-five days to be served in the county jail and the balance to be served on probation. The Defendant was also ordered to pay a $600 fine and court costs, and his licence was suspended for two years. The trial court also denied the Defendant's motion for a new trial based on his claim that the State failed to prove he was on a public road. The Defendant timely filed a notice of appeal.

ANALYSIS

The Defendant is now before this Court with the claim that the evidence presented at trial was insufficient to convict him beyond a reasonable doubt of driving under the influence of an intoxicant. Specifically, the Defendant argues that the State did not prove he had physical control of a vehicle on a "public road" or other area "frequented by the public" as required by Tennessee's DUI statute. We disagree.

Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by

the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

The Defendant was convicted of driving under the influence of an intoxicant in violation of Tennessee Code Annotated, section 55-10-401. This statute, in relevant part, makes it unlawful for

> any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads or highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while: Under the influence of any intoxicant . . . .

Tenn. Code Ann. § 55-10-401(a)(1).

The Defendant concedes the State provided sufficient evidence to demonstrate that he was intoxicated at the time he was arrested, and in accordance with case law, admits he was in physical control of his vehicle. See State v. Lawrence, 849 S.W.2d 761, 765 (Tenn. 1993) (holding that physical control of a vehicle can be determined by factors such as the defendant's location in the vehicle and the location of the ignition keys). However, the Defendant claims the State failed to prove that he was "on a public road, highway, street, alley, shopping center, trailer park, apartment house complex, or other premises generally frequented by the public at large." To support this argument, the Defendant asserts that he was "parked six feet off Ivydale Road" in an area that was "rural, heavily wooded, in the mountain" and with "no houses or other buildings in the area." Thus, the Defendant argues, the State "failed to prove that [the Defendant] was driving or in physical control of the vehicle within the specified areas in which his conduct would violate" the DUI statute. On appeal, the State argues that the jury could properly infer that the Defendant drove on public roads to get to where he was parked and that the Defendant admitted he had too much to drink, and therefore, the evidence was sufficient to support the jury's conviction.

We must disagree with the State's argument on appeal that the Defendant's conviction should stand because the "inference may reasonably be made that the [D]efendant drove his vehicle on a public road while under the influence of an intoxicant in order to get to his final location." To the contrary, the record reflects significant evidence that the Defendant continued to drink after parking at his final destination on the side of Ivydale Road, which could account for his intoxicated state when he was discovered by Sgt. Lindsay. Assuming that the location where the Defendant was found was not a public road or other location covered by the DUI statute, the record would not support the State's assumptions that (1) the Defendant must have driven on public roads to get to his final location, and (2) he must have been intoxicated when he was driving on those public roads prior to reaching his final location. Nevertheless, we find the evidence is sufficient to support the Defendant's DUI conviction because the location where the Defendant was discovered in his vehicle was a public road.

The evidence contained in the record on appeal demonstrates that when the Defendant was discovered by law enforcement, he was sitting in the driver's seat of his vehicle, the keys were in the ignition, he was intoxicated, and he was parked on the gravel shoulder of Ivydale Road. The Defendant was clearly in physical control of the vehicle, and he concedes that the evidence supports the jury's conclusion that he was intoxicated. Thus, the only issue before this Court is whether the proof supports a finding that Ivydale Road is a public road as encompassed by the DUI statute. Ivydale Road was identified by the arresting officer by name and described as an asphalt road bordered by a gravel shoulder. The record reflects that at least one residence is located off of Ivydale Road, and the road extends several miles from Highway 25W up into Walnut Mountain. Therefore, the evidence presented at trial supports the conclusion that Ivydale Road is a public road for the purposes of the DUI statute. The fact that no houses or building were near the portion of Ivydale Road on which the Defendant stopped, or that the location was characterized as "rural," do not "privatize" an otherwise public thoroughfare.

Whether the Defendant was in physical control of a vehicle on a "public road" while intoxicated is a question for the jury. We note that the jury was prompted to closely examine the public road issue by the Defendant's counsel during closing arguments. The jury, by convicting the Defendant of DUI, found that the Defendant was on a public road while intoxicated. The Defendant now asks this Court to re-weigh and re-evaluate the evidence and hold that the record does not support the jury's finding that Ivydale Road is a public road. However, our supreme court has held that this Court must refrain from doing just that. See State v. Pruett, 788 S.W.2d 559, 561 (Tenn. 1990) (overturning this Court's ruling that the roadways of a fairgrounds were not public roads after the trier of fact had found they were public roads for the purposes of the DUI statute). We may not "substitute [our] inferences for those drawn by the trier of fact," for to do so would be "in effect, a substitution of [our] judgment for that of the trial court." Id.

The Defendant has failed to carry his burden of demonstrating that no rational trier of fact could find that all the essential elements of driving under the influence of an intoxicant were proved beyond a reasonable doubt based on the evidence presented at trial. After considering all of the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find beyond a reasonable doubt that the Defendant was on a public road at the time of his arrest for DUI. Accordingly, we find the evidence was sufficient to support the Defendant's convictions. This issue is without merit.

CONCLUSION

Based on the foregoing reasoning and authorities, the judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE